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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 STEVEN ANTHONY CLEMENS, No. CIV S-03-1006-LKK-CMK-P

12 Petitioner,

13 vs.

ORDER

14 SHASTA COUNTY SHERIFF,

15 Respondent.
16 _____/

17 Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of
18 habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner's request for
19 a certificate of appealability (Doc. 24), filed on January 5, 2009.

20 Petitioner indicates he is requesting a certificate of appealability in order to appeal
21 this court's denial of his application for a writ of habeas corpus.¹ Before petitioner can appeal
22 this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P.
23 22(b). A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has
24 _____


25 ¹ Petitioner also requests permission to proceed in pro per as his retained counsel
26 has died. The court need not address this request as this case is closed. However, the Clerk of
the Court is directed to update petitioner's address to reflect he is currently incarcerated at
California State Prison, Solano.

1 made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The
2 court must either issue a certificate of appealability indicating which issues satisfy the required
3 showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

4 The timely filing of a notice of appeal is a jurisdictional requirement. See Scott v.
5 Younger, 739 F.2d 1464, 1466 (9th Cir. 1984). The time limit for filing a notice of appeal
6 following entry of judgment is 30 days. See Fed. R. App. P. 4(a). In this case, petitioner’s
7 application for writ of habeas corpus was denied on September 27, 2006 (Doc. 17) and judgment
8 was entered on September 29, 2006 (Doc. 18). Petitioner’s notice of appeal in this action was
9 filed more than 30 days after entry of judgment. It is, therefore, untimely and cannot provide the
10 appellate court with jurisdiction. The issuance of a certificate of appealability cannot vest the
11 court of appeals with jurisdiction if jurisdiction is not proper in that court. Cf. Hayward v. Britt,
12 572 F.2d 1324, 1325 (9th Cir. 1978) (addressing issuance of a certificate of probable cause).
13 Because petitioner’s notice of appeal is untimely, the court declines to issue a certificate of
14 appealability.

15 Accordingly, IT IS HEREBY ORDERED that petitioner’s request for a certificate
16 of appealability (Doc. 24) is denied.

17 DATED: February 10, 2009.

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21 LAWRENCE K. KARLTON
22 SENIOR JUDGE
23 UNITED STATES DISTRICT COURT
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